IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26/09/2003

Coram

The Hon'ble Mr. Justice P. SATHASIVAM

Writ Petition No. 12396 of 2003
and
W.P.M.P.No. 15573/2003 and W.V.M.P.Nos. 1088 and 940/2003

M. Subramanian. .. Petitioner.

-Vs-

1. The Secretary to Government,
Local Administration Department,
Government of Tamil Nadu,
Fort St. George, Chennai-9.

2. The Revenue Divisional Officer,
Udayarpalayam, Perambalur District.

3. Chandrahasan.
(3rd Respondent was impleaded as per Order
of Court dated 15-7-2003) .. Respondents.

Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, as stated therein.

For Petitioner :: Mr. Vijaynarayan for
Mr. G.R. Swaminathan:-

For Respondents 1 and 2 :: Mr. R. Muthukumaraswami, Addl. Advocate General, assisted by Mr. V. Subbarayan,
Spl.Govt., Pleader

Mr. S. Muthukrishnan:- For 3rd Respondent.

:ORDER

By consent of all the parties main writ petition itself is taken up for disposal. Aggrieved by the order of the Government in G.O.Ms.No.32 Rural Development (C1) Department dated 17-4-2003, removing the petitioner from the post of Chairman, Panchayat Union Council, Sendurai, Perambalur District, the

petitioner has filed the above writ petition to quash the same and consequently direct the first respondent-Government to reinstate him as Chairman, Sendurai Panchayat Union Council.

2. The case of the petitioner is briefly state hereunder:
According to him, he was elected as Chairman of Sendurai Panchayat Union Council on 31-10-2001. A written notice of intention to make a motion expressing want of confidence in him was delivered to the Revenue Divisional Officer, Udayarpalayam. Subsequently a meeting was convened on 10-12-2002. In the meanwhile, he filed a writ petition in W.P.No. 41401/2002 assailing the amendment made in Section 212 of the Panchayats Act and the same has been admitted by this Court. The proceedings removing him from the post of Chairman were fully video taped. Prescribed statutory procedures were not followed. The motion laid against him was defeated. This was duly announced by the Revenue Divisional Officer. Thereafter, the vested interests who were against him instigated a pandemonium and in the process the no confidence motion was put to vote for the second time. This is illegal and against all principles of democracy. The papers had since been forwarded to the Secretary to Government. He had lodged complaint stating that there was double voting. Since he apprehended that he may not be allowed to prove this allegation, he filed Writ Petition No. 3490/2 003 before this Court and this Court directed the first respondentGovernment to give him an opportunity of hearing on 17-2-2003. He appeared in person and produced the video tapes. It could clearly be seen that there was twice voting and that in the first round the motion was defeated. Yet the first respondent had issued the impugned G.O. without even considering or adverting to his objections In these circumstances, in the absence of any alternative or effective remedy, filed the present writ petition for quashing the said impugned order.

3. Special Secretary to the Government, Rural Development Department, Chennai-9 has filed a counter affidavit wherein it is stated that the Union Council Members of the Panchayat Union, Sendurai have decided to bring no Confidence motion against M. Subramanian, Chairman, Panchayat Union Council, Sendurai and obtained signatures from 16 Union Councillors. Out of 16 Union Councillors, three of them together have presented the memorandum before the Revenue Divisional Officer, Udyarpalayam on 1-11-2002 along with 9 allegations and show cause notice under Section 212(3) of the Tamilnadu Panchayat Act, 1994 (Tamil Nadu Act 21 of 1994) (in short the Act) was issued to the petitioner-Chairman, Sendurai Panchayat Union along with a copy of the allegation on 8-11-2002, asking him to give his statement in reply to the charges within 7 days from its receipt. The petitioner offered his explanation on 16-11-2002. The allegation of the councillor and vice chairman is that the petitioner failed to carry out the duty cast upon him in administration of panchayat union as per the said Act and Rules and failed to give proper respect to the councillors and Vice-Chairman. Hence, the Union Councillors moved No Confidence motion against the petitioner. The 2nd respondent issued a notice under Section 212 (4) of the said Act to the councillors fixing the date and time of the council meeting to be convened by the 2nd respondent under Section 212 (5) of the Act. At this stage, the petitioner filed a petition challenging the notice dated 8-11-2002. Though this Court has granted interim stay, the same has been vacated on 26-12-2002.

Hence the second respondent conducted, the no-Confidence Motion on 10-12-2002 after giving appropriate notice to the petitioner and other councillors. A detailed report was submitted to the Secretary, Rural Development on 10-12-2002 stating that 15 councillors out of 19 casted their vote in favour of the No-Confidence motion and signed in the Minutes to that effect. The petitioner gave a representation against the Revenue Divisional Officer to the Government stating that at the time of conducting No confidence motion on first occasion, when the voting took place on 10-12-2002 the motion was defeated and subsequently, there was a pentemonium and it is claimed that there after again the motion was stated to have been passed and thereby the NoConfidence motion said to have been passed is not in accordance with the Act and the Rules and thereby is invalid. Even the W.P.No. 3490/2003 filed by the petitioner has been disposed of by this Court on 5-2-200 3 directing the petitioner to appear before the first respondent on 1 7-2-2003. He appeared on that date and necessary opportunity was given to the petitioner. He was also heard in person. The cassette produced by the petitioner was also seen by the first respondent. The petitioner gave in writing that the video cassette was witnessed. A report was called for from the District Collector, who submitted a report on 25-2-2003 stating that the voting took place in one sitting and thereby no confidence motion against the Chairman should be considered as passed, since out of 19 councillors, 15 councillors voted in favour of No Confidence Motion and the No Confidence Motion has been passed as per Act and Rules. On receipt of the report, the first respondent passed an order on 13-03-2003 with a view to comply the order of this Court dated 28-02-2003. After considering all the materials finally, the Government accepted the draft Notification and passed the impugned order. The same was gazetted on 17-04-2003 removing the petitioner from the post of Chairman of the Panchayat Union council, Sendurai as per sub-section 13 of Section 212 of the Act. As directed by this Court, the petitioner was heard in person. His video cassette was seen in his presence. After getting report from the

District Collector, the Government have passed the order on 17-4-2003, removing the petitioner from the post of Chairman, Sendurai Panchayat Union Council.

4. Revenue Divisional Officer, Udayarpalayam, 2nd respondent herein filed a separate but identical counter affidavit as that of the first respondent.

5. The third respondent has filed an affidavit stating that on 10-12-2002 no confidence meeting was held and it was supported by 15 members and opposed by four members. The second respondent properly recorded the minutes of the said meeting and all the members of the Union council including the petitioner signed in the minutes in the presence of the second respondent who forwarded the same to the first respondent-Government for further action. Since the Government had not acted quickly, he filed a writ petition in W.P.No. 6489/2003 before this Court seeking appropriate direction to the Government. On 28-2-2003 this Court directed the Government to pass appropriate orders within three weeks from the date of receipt of the said order. Finally after considering all the materials, the Government have passed the impugned order. As per the said order, in the light of the removal of the President, the Vice-Chairman-Mrs. R. Lalitha had taken charge of the post of Chairman on

the same day i.e. on 17-4-2003. There is no illegality warranting interference by this Court.

6. In the light of the above pleadings, I have heard Mr. Vijaynarayanan, learned counsel for the eptitioner; Mr. R. Muthukumaraswamy, learned Additional Advocate General for respondents 1 and 2; and Mr. S. Muthukrishnan for third respondent.

7. Mr. Vijaynarayan, learned counsel for the petitioner, after taking me through the impugned proceedings, would contend that the first respondent has not taken into account the fact that there was twice voting on the subject motion on 10-12-2002. He also contended that the first respondent ought to have appreciated the pendency of Writ Petition No. 41401/2002 in which the very validity of the amendment to Section 212 is in question. According to him, no voter on any motion can be allowed to recall the vote already cast and vote for the second time. Refuting the said contention, Mr. R. Muthukumaraswamy, learned Additional Advocate General, after placing the entire file relating to no confidence motion, report of the District Collector and the order impugned, would contend that there is no violation of any of the statutory provisions as claimed and prayed for dismissal of the writ petition.

8. In the light of the specific claim of the petitioner with regard to the No Confidence Motion moved against the petitioner, who was elected as Chairman of Sendurai Panchayat Union Council, apart from perusing the counter affidavit of respondents 1 and 2, I summoned the original File. Pursuant to the direction, learned Additional Advocate General has placed the relevant File. It is seen that Panchayat Union Councillors of Sendurai Taluk had brought a no confidence and removal motion against Chairman as early as June, 2002. Inasmuch as no confidence motion cannot be entertained for the first year of the office of Chairman as per the Act, the same was not permitted. However, the councillors boycotted the council meeting convened by the Chairman and meetings could not be convened on 12-08-2002 and 24-10 -2002 for want of quorum. It is further seen that as soon as the statutory one year period was passed, a no confidence motion was brought against the Chairman. It is seen from the report of the District Collector, Perambalur District that after completion of all the formalities, the voting on the motion was scheduled on 10-12-2002. There was no dispute over the following proper procedure on motion till voting. It is further seen that the confusion arose only on the day of voting. According to the District Collector, a ballot paper was circulated which has two columns saying " ek;gpf;if cz;L or ek;gpf;if ,y;iy". The details about the motion or (Nambikai on whom) were not on ballot paper. No Confidence Motion was not written on board. It should have been read out, but Block Development Officer said that he read only the statement of allegation and members were asked to vote. Since the ballot paper did not mention anything, the members as per the individual understanding voted. The report further says that as soon as the counting had started the members started shouting saying that they had voted against the Chairman i.e., what they meant by ticking means, they do not have confidence in Chairman and not that they have no confidence in the motion. As the voting taken place under utter confusion and from the discussion with the Revenue Divisional Officer, Block Development Officer and councillors, the first ballot paper cannot be taken as valid ballot because the ballot paper

did not contain the details of the motion, nor the members were explained that what they are voting for i.e., whether they are voting for confidence in Chairman or for no confidence. The members realised that immediately as counting started and before the counting was over started demanding that the voting cannot be taken as voting against the 'No Confidence motion' they had voted against the chairman. The report shows that the process cannot be taken as fair as the individual members were unaware of exact method of voting. In those circumstances, a new ballot paper with exact details of motion was circulated and voting took place. Thereafter, the members voted against the Chairman and the No Confidence Motion was passed. Immediately a Minute Book was also signed by all the members. This proves the fact that no confidence motion has passed. Learned Additional Advocate General has produced copy of the Minutes which contain signatures of all the members. It also shows the acceptance of result of voting. The petitioner herein-Chairman has also signed the Minutes Book and accepted the voting. As rightly argued by the learned Additional Advocate General, if he was in disagreement of motion or procedure, he should have refused to sign the Minute Book. The Collector has also stated in his report that both voting took place in one sitting and before the second voting the members were not permitted to go out or relax or discuss. The Collector has concluded that out of ignorance, lack of understanding and lack of clarity in ballot paper the confusion occurred. He also concluded that no confidence motion against the Chairman should be considered as passed and the first vote cannot be considered as valid voting from the reasons mentioned above. As observed earlier, I have verified all the records including the details of the Minutes which which would go to show that majority of more than 2/3rd of the councillors have voted against the Chairmanpetitioner as he lost the confidence of Panchayat Union council. Though the notification issued by the first respondent-Government does not disclose all the details, the File produced by the Additional Advocate General shows all the details and I am unable to accept the argument of the learned counsel for the petitioner.

9. As rightly argued, though there is no provision to hear the person concerned by the Government while considering the report of the Revenue Divisional Officer under Section 212 of the Tamil Nadu Panchayat Act, in view of the earlier direction of this Court dated 5-2-2003 in W.P.No. 3490 of 2003, the Government before taking a decision on the report of the Revenue Divisional Officer, the petitioner was given notice of personal hearing and his video cassette was screened in the presence of the petitioner, Secretary and Director of the Department. Thereafter, the Government also called for a report with reference to the same from the District Collector. Considering all the materials and after affording opportun ity to the petitioner, hearing his objection etc., after satisfying that the motion expressing want of confidence in M. Subramanian, Chairman, Sendurai Panchayat Union Council was carried out with the support of 15 members out of sanctioned strength of 19 members in the meeting convened by the Revenue Divisional Officer, Udayarpalayam on 10-12-2002 after following the procedure specified in Section 212, the Government issued a Notification removing the petitioner from the office of the Chairman of Panchayat Union council, Sendurai. I am satisfied that the meeting was convened by the Revenue Divisional Officer in accordance with the statutory provision that no confidence motion was carried out by a

majority of members and the same was approved by the Government by exercising power under Section 212 of the Act and issued the impugned Notification. I do not find any error or infirmity in the order impugned; consequently the Writ Petition fails and the same is dismissed. No costs.

R.B.

Index:-Yes
Internet:- Yes.
To:-
1. The Secretary to Government,
Local Administration Department,
Government of Tamil Nadu,
Fort St. George, Chennai-9.

2. The Revenue Divisional Officer,
Udayarpalayam, Perambalur District.